IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SPECIAL JURISDICTION ORIGINAL SIDE

CHARTERED ACCOUNTANT REFERENCE NO. 4 OF 2000

In the matter of the Council of the
Institute of Chartered Accountants
of India, Indraprastha Marg,
New Delhi .. Petitioner

vs.

Shri B. K. Kurhade, ACA,
M/s. Balkrishna Kurhade & Co.,
Chartered Accountants
Shri Bhagwati Co-op. Housing Society,
Behind Hotel Pawan,
Flat No.1, Asha Nagar, Nashik Road-422 101. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S.Srikrishna i/b. M/s.Kanga & Co. for the petitioner-applicant.

Mr. U.T. Yadav i/b. Mr. S. S. Pakale for Union of India.

None for the respondent.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 12th August 2004

ORAL JUDGMENT (PER R.M. LODHA,J.)

Shri B.K. Kurhade, Chartered Accountant is the member of the Institute of Chartered Accountants of India. We shall refer to him as the

respondent. The Joint Director of Industries, Aurangabad (for short, "the complainant") filed the complaint of the professional misconduct against the respondent before the Institute of Chartered Accountants of India. The particulars of the allegations against the respondent as set out in the complaint read thus:

> "1. In case of applications at sr. no.2, 5, 8, 24 Shri B. K. Kurhade has certified the past consumption of Seemless carbon Steel Tubes. In all the certificates the consumption of raw material has been given only in terms of values without mentioning quantities of raw material. The raw material Seemless Carbon Steel Tubes is not required for the registered end products of the units. Therefore, there cannot be any past consumption of this raw material and obviously the past consumption certificates issued by the C.A. In respect of these units are false.
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> 2. In case of the applications of M/s.V.B. Patil Engineers at sr. No.15 and 46 in the chart, the unit is registered for Engineering & Repairing job work and machinery was also inadequate to process the imported raw material. During the time of subsequent visit to the unit on 23.11.90, it was found that the unit was engaged in the foundry activity and no signs of the unit having engaged in the metal processing could be found. In fact, the unit was not in possession of any sheet metal processing machinery except one corroded hand operated shearing machine which was out of operation from long period. Thus the recommended raw material was only not required by the unit but it was also incapable to process it. Therefore, it is clear that the C.A. Has certified false consumption of raw material in respect of this unit.
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> 3.(a). In respect of application of M/s. Thermo Enterprises at Sr.No. 19 in the chart, Shri B.K. Kurhade has certified the past consumption of CRCA Sheets as below -

AM – 85		April '85 to Oct. 85.	
Qty.	Value	Qty.	Values
80 M.T.	Rs.4,80,000	110 M.T.	Rs.6,60,000

However for the other application of the same unit at Sr.No.50 in the chart he has certified the past consumption of CRCA sheets as below -

AM-85		AM-86	
Qty.	Value	Qty.	Value
110 M.T.	Rs.6,60,000	106 M.T.	Rs.6,40,000

3(b). Similarly in respect of the application of M/s. Kushal Engineering Works at sr. no. 20 in the chart Shri B. K. Kurhade has certified the past consumption of CRCA sheets as below -

AM-85		April – Oct. '85.	
Qty.	Value	Qty.	Value
90 M.T.	Rs.5,40,000	270 M.T.	Rs.16,20,000

However, for the other application of the same unit at sr. no.52 in the chart he has certified the past consumption as below -

AM-85		AM-86	
Qty.	Value	Qty.	Value.
270 M.T.	Rs.16,20,000	266 M.T.	Rs.15,98,000

Thus, in respect of each of the above two units, it is seen that Shri B.K. Kurhade has certified different consumptions for the same

period. Therefore, it is obvious that the C.A. Has certified the false past consumption of raw material without actual verification of records of the units.

4. In case of the application of M/s. Vainateya Engg. At sr. no.38 in the chart the past consumption of CRCA sheets certified by the C.A. For April to Oct. '86 period is 110 M.T. Worth Rs.7,70,310. In the other application of the same unit at sr. no. 116 in the chart the unit's past consumption for the period April '86 to March '87 as certified by the C.A. Is same i.e. 110 M.T. Worth Rs.7,70,000/-. This shows that the past consumption has been certified blindly by the C.A. Without actual access to the records of the unit.

5. In case of the following 3 units Shri B.K. Kurhade has certified the past consumption of CRCA sheets as below -

Name of the unit	AM-86		April-Oct.'86.	
	Qty.	value in lakhs	Qty.	Values in lakhs.
a) Renuka Inds. appln. At sr. no. 40 in the chart.	130 MT	Rs. 9.11	260	Rs.18.20
b) Mayur Enterprises appln.at sr. no. 42 in the chart.	110 MT	Rs. 7.50	180	Rs.10.80
c) Renuka Press Metal Inds.appln. At s. no. 67 in the chart.	190 M.T.	Rs. 13.12	230	Rs. 16.10

However, the past consumptions of the same units and for the same periods certified by the other C.A. Shri S. F. Yevlavala for the

other applications of the units are much less than the corresponding consumptions certified by Shri B. K. Kurhade and they are as under -

Name of the unit	AM-86		AM-87	
	Qty.	value in lakhs	Qty.	Values in lakhs.
a) Renuka Inds. Appln. .at s. no. 117 in the chart.	61 MT	Rs. 559681	87 M.T.	Rs.724325
b) Mayur Enterprises appln.at sr. no. 118 in the chart.	45 MT	Rs. 424786	51 M.T.	Rs.492237
c) Renuka Press Metal Inds.appln. at s. no. 121 in the chart.	70 M.T.	Rs. 862674	75 M.T.	Rs.894484

The past consumption of raw material certified by Shri B. K. Kurhade are exhorbitantly higher than the corresponding past consumptions certified by Shri S. F. Yavlawala. It stands to reason to believe that Shri B. K. Kurhade has certified the false consumptions of raw material which are very much on the higher side.

6. In case of 33 applications at the following sr. nos. in the chart the machinery possessed by the units were inadequate to process the CRCA sheets.

S. Nos. 7, 15, 19, 25, 26, 30, 41, 46,54, 55, 56, 57, 58, 66, 67, 74, 76, 77, 84, 85, 89, 91, 95, 97, 101, 102, 104, 108, 109, 120, 122, 125 & 126.

Due to adequacy of the machinery these units were not capable to process the imported raw material. Therefore, the consumption of very high quantities of CRCA sheets certified by C.A. In respect of these units maynot be correct.

7. Subsequent upon the recommendations of applications and receipt of licences, 30 units were visited by the field staff of the Directorate of Industries during 21.11.90 to 24.11.90. Responsible persons like Manager, Proprietor, partner or Director of the units could be contacted in case of 10 units at the Sr. Nos. 9, 10, 11, 38, 54, 68, 76, 88, 101 & 103. They told that they had never seen Shri B. K. Kurhade before and he had not verified their records in order to certify the past consumption of raw material. Similar information was disclosed by the proprietors of the units at sr. no. 106 and sr. no. 111 in the chart when they called on the undersigned during Dec. '91. From the above facts, it is clear that Shri B. K. Kurhade has certified the past consumption of raw material without actual verification of the records of the units.

8. In case of the 32 applications at the following sr. nos. in the chart Shri B. K. Kurhade in his consumption certificates has shown the value of consumed raw material as the rates of round figures of Rs. 6,000, Rs.7,000 or Rs.8,000 per M.T.

Sr. Nos. 4, 6, 9,11, 14, 15, 16, 17, 18, 19, 20, 21,22,23,25,26,45, 48,49,53,54,60,61,62,74,76,80,105,123,124,125 and 127. Practically, it is likely impossible and it only reveals that Shri B.K. Kurhade has certified the false consumptions at the rates of round figures without going into actual verification of records of the units.

9. During the same year of AM-85 Shri B. K. Kurhade has certified the consumption at the rates varying from Rs. 5000 per M.T. To Rs. 9333 per M.T. The rate of Rs.9333 is the highest in case of application of m/s. Ujwal Engg. & Mfg. Co. P. Ltd. At Sr. No. 88 in the chart and the rate of Rs.5,000 is the lowest in case of application of M/s. Shabbir Inds. At sr. no. 108 in the chart.

The corresponding lowest and highest rates for AM-86 are

Rs.4909 and Rs. 8742 for application of M/s. Mee Equipments at sr. no. 68 in the chart and M/s. Chandan Industries at sr. no. 33 in the chart respectively.

If the same raw material was purchased during same period by various units there cannot be such a heavy fluctuation in rates from unit to unit. Thus it is obvious that the past consumptions certified by Shri B. K. Kurhade are not factual.

10. As a part of sample inspection, the units at sr. nos. 111, 116, 119, 123, 126 and 127 in the chart were visited personally during Sept.- Oct. '87 by Shri P. M. Naik, the then Jt. Director of Industries, Nasik Region. It was found that out of the above 6 units, 2 units at sr. no. 123 and 127 in the chart were not having sheet Metal Processing Machinery. These units were requested to furnish the purchase bills for CRCA sheets procedured from all sources with corresponding sales bills for the finished products during AM-86 & AM-87. But none of these units have produced the relevant records.They were also issued show cause notices by RPAD letters for non-compliance of the above. However, they failed to submit the records to support the past consumptions certified by the C. A.

This reveals that these units had not consumed the raw material to the extent certified by the C. A. It can therefore be concluded that he had issued false past consumption certificates without actual verification of the records of the units.

11. In case of 68 applications at the following sr. nos. in the chart the units have received the import licences.

S.Nos. 4, 7, 14 to 22, 25, 26, 30, 39, 41, 43 to 46, 48 to 54, 56, 58, 60, 62, 64, 66, 69, 71, 72, 74, 76, 78, 80 to 85, 87 to 89, 91, 95, 97, 99 to 102, 104 to 106, 108 to 111, 119, 123 to 126, 128.

However, they could not furnish the information regarding utilisation of the raw material imported against these licences. Therefore, we can come to the conclusion that requirement of raw

material in respect of these units was not genuine and the C.A. Must have certified the wrong past consumptions which were very much on the higher side.

12. 28 units involving 30 applications at the following sr. nos. in the chart filed the police complaints for having been cheated by the agent in this whose transaction of imported goods.

Sr. Nos. 16, 18, 20, 22, 26, 41, 43, 49, 52, 53, 54, 56, 58, 64, 66, 69, 71, 72, 74, 76, 81, 83, 84, 88, 91, 95, 100, 101, 104, 105.

In the said complaints they have represented that the agent got their signatures on blank application forms and other import documents. He fabricated the documents and arranged the import of raw material. It reveals that the parties were not required to contact Shri B. K. Kurhade for certification of the past consumption of raw material. Thus it can be believed that Shri B. K. Kurhade had the hands in gloves with the agent and certified the false past consumptions of raw material in respect of these units."

2. The copy of the complaint was sent to the respondent In response thereto the respondent filed written statement. Rejoinder was filed by the complainant.

3. The Council of the Institute of Chartered Accountants of India held the view that the complaint against the respondent needed to be inquired into as the prima facie case of professional misconduct was made out and, accordingly, referred the complaint to the disciplinary committee.

4. Before the disciplinary committee, as a matter of fact the respondent did not seriously challenge the charge against him that the certificates of consumption issued by him did not reflect the correct factual position of the consumption of raw materials by the concerned units. He also did not seriously dispute that the requisite records of the concerned units to whom the certificates were issued were not properly examined and scrutinised, much less thoroughly. Shortly put the respondent virtually admitted the allegations and the charge against him. However, he sought to urge that he was misled by his assistants, SSI unit manufacturers and their legal advisers. He stated that he was suffering from polio and is a disabled person since his birth having permanent disability in both his legs and was not in a position to walk and go beyond to certain distance independently. He stated that it was his bad luck that he met with an accident in which his right was was fractured and he sustained other injuries and remained bed ridden for four months. He candidly accepted his mistake and submitted that he was

prepared to accept the punishment that may be meted out by the Institute.

5. As there was no serious challenge to the allegations of professional misconduct by the respondent, the disciplinary committee had no difficulty holding the respondent guilty of the professional misconduct under clauses (2) and (7) of Part I of Second Schedule read with sections 21 and 22 of the Chartered Accountants Act, 1949. The disciplinary committee forwarded its report to the Council. The Council concurred with the finding of the disciplinary committee that the guilt of professional misconduct was proved against the respondent and recommended to this Court that the name of respondent be removed from the Register of Members for a period of three months.

6. In what we have discussed above, without going into further details, we concur with the finding of the disciplinary committee and accepted by the Council that the case of professional misconduct under clauses (2) and (7) of Part I of Second Schedule read with sections 21 and 22 of the Act of 1949.

7. As regards the punishment that deserves to be inflicted upon the respondent in the light of the nature of the misconduct proved against him,

we would like to notice that in Chartered Accountant Reference No.1/1996 decided by us on 9th August 2004 for issuance of wrong certificates of past consumption and production to the 12 small scale industries located in Ahmednagar district for the licensing year 1987-88, the respondent has been held guilty of professional misconduct and we ordered that the name of respondent shall be removed from the Register of Members for a period of three months. The aspect of punishment in that chartered Accountant reference was considered by us thus:

> "5. Having concurred with the finding of the disciplinary committee that the respondent was guilty of professional misconduct, the Council recommended to this Court that the name of respondent be removed from the Register of Members of the Institute for two years. In the facts of the case and particularly the frank and honest admission by the respondent of his professional guilt and also his candid submission that he was prepared to accept punishment that may be meted out to him, we are of the considered view that removal of the name of respondent from the Register of Members for a period of two years is too harsh and needs to be modified.
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> 6. The respondent is a physically disabled person suffering from polio. Nothing has been found by the disciplinary committee that the respondent conspired or colluded with the concerned Small Scale Industries in issuance of the said certificates. A penalty of Rs.2,000/- has already been imposed upon him by the Joint Chief Controller of Imports and Exports under the Imports and Exports Control Act, 1947 and Imports Control Order, 1955. We also find that the Joint Chief

> Controller of Imports and Exports in his order dated 17th October 1990 imposing a penalty upon the respondent ordered that the certificates issued by the respondent shall not be accepted by the Controller of Imports and Exports for a period of five years from 1991 to 1995. For his acts and omissions in issuing the consumption certificates which were not correct, the respondent has already suffered a punishment at the hands of the Joint Chief Controller of Imports and Exports. As regards the professional misconduct that has been established against the respondent, we are of the considered view that interest of justice shall be subserved if the punishment recommended by the Council is reduced by removal of the respondent's name from the register of members for a period of three months. This punishment would be deterrent enough and eye opener for the respondent for being careful in future."

8. The respondent seems to have issued large number of false certificates of past consumption of raw materials and production in the years 1985-86 and 1987-88. The Council has recommended that the name of respondent be removed from the Register of Members for a period of three months. Though the conduct of the respondent as a Chartered Accountant is far from satisfactory and he seems to have repeatedly issued wrong certificates of past consumption of raw material and production to various units, what impels us to accept the recommendation of the council and not enhance the punishment recommended is respondent's candid and honest admission of his

guilt and readiness to accept the punishment that may be meted out to him. We are, accordingly, of the view that the punishment recommended by the Council may be accepted by us. We dispose of this reference by the following order:

(i) The respondent is held guilty of professional misconduct under clauses (2) and (7) of Part I of second Schedule read with sections 21 and 22 of the Chartered Accountants Act, 1949.

(ii) We order that the name of the respondent be removed from the Register of Members of the Institute of Chartered Accountants of India for a period of three months.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)